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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,147	05/20/2002	Ailsa Helen Louise Graig	977777-111548	8175

6449 7590 07/14/2003

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WASHINGTON, DC 20005

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b> <i>file copy</i>	Application No.	Applicant(s)	
	10/030,147	GRAIG ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A VENKAT	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other:  |

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### **DETAILED ACTION**

Receipt is acknowledged of priority document, IDS, declaration, assignment, and preliminary amendment A, CFR, and associative power of attorney filed on 1/28/02; 5/20/02; 6/28/02 and 4/30/03. **As per Rule 1.126 claims 7-13 were renumbered as claims 8-14.** The preliminary amendment canceled claims 1-7 and added claims 8-14. Claims 8-14 are pending in the application and the status of the application is as follows:

#### ***Information Disclosure Statement***

The references cited in the search report have been considered as applicants cited these references on PTO-1449.

#### ***Claim Rejections - 35 USC § 112***

1. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim 12 is unclear as to applicant's intent. There are 5 sets of combination of anti-free radicals. It appears that the composition can have one of the 5 sets of anti free radicals. The claims would read better by changing to Markush group format.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 8-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of the abstracts DE 4419783('783), RU 0031447('447) and JP 407291838('838).

*The instant application is claiming hair care compositions comprising a synergistic mixture of three anti-free-radical agents selected from the group consisting of:*

*a. ascorbic acid, its salts and esters*

*b. morus alba*

*c. origanum vulgare*

*d. panax ginseng*

*e. rosmarinus officinalis*

*f. camellia sinensis and*

*g. grape seed extract*

*and method of treating the hair using three ingredients.*

The DE abstract teaches hair tonic using panax ginseng. The abstract does not combination of this active ingredient with other components. The RU abstract teaches shampoo using grape seed. The claims are drawn to grape seed extract and it is obvious to one of ordinary

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skill in the art to use the extract of grape seed expecting the same effect. The RU abstract does not teach the combination of grape seed extract with two other ingredients. The JP abstract teaches ascorbic acid for hair care and treatment. Thus all the individual agents are used in the hair care art.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions by combining the ingredients expecting reasonable amount of success for hair care treatment. The motivation to combine the ingredients flows logically from the art for having been used individually in the hair care treatment. Absent a showing the criticality of the combination of these ingredients over the individual components giving unexpected and superior results, the claims are rendered prima facie obvious over the combination of the abstracts.

**5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

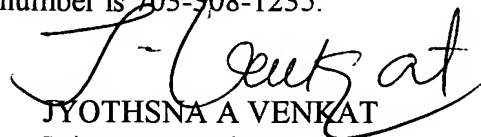
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-308-7924 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
JYOTHSNA A VENKAT  
Primary Examiner  
Art Unit 1615

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July 11, 2003